IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 13TH JULY 2006 / 22ND ASHADHA,1928

WP(C).No. 97 of 2006(J)

AGAINST THE ORDER DATED 8/12/05 IN IA 1928/2005 IN OS.411/2004 of PRL.MUNSIFF, KASARAGOD

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PETITIONER:

THE SECRETARY, KARADKA GRAMA PANCHAYATH, MULLERIA POST, KARADKA VILLAGE, KASARAGOD TALUK AND DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

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1. SRIHARI, 35 YEARS.

2. N.GOPALAKRISHNA, 48 YEARS.

3. N.CHANDRAMOHAN, 42 YEARS.
NO.1 TO 3 ARE CHILDREN OF LATE N.SUBRAYAYYA, HINDUS, NO.1 IS TEACHER AND NO.2 AND 3 ARE AGRICULTURISTS BY PROFESSION, ALL ARE RESIDING AT NEELANGALA HOUSE OF NARAMPADY, MOVVAR POST, KUMBDAJE VILLAGE, KASARAGOD TALUK AND DISTRICT.

4. GOVINDA, 31 YEARS, SON OF KORAGA, HINDU, COOLY BY PROFESSION, RESIDING AT NELLIADKA HOUSE OF RAJIV GANDHI HARIJAN COLONY, KARADKA VILLAGE, MOVVAR POST, KASARAGOD TALUK AND DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON 13/07/2006 DELIVERED THE FOLLOWING:

WPC.97/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN OS.411/04 OF MUNSIFF'S COURT, KASARAGOD.

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT FILED BY PETR. IN O.S. NO.411/04 OF PRL.MUNSIFF, KASARAGOD DT.18.2.05.

EXT.P3 – TRUE COPY OF WORK MEMO FILED BY PETR. BEFORE ADV. COMMR. IN O.S.411/04 DT.30.6.05.

EXT.P4 – TRUE COPY OF REPORT SUBMITTED BY ADV.COMMR. APPOINTED IN O.S.411./04.

EXT.P4(A) – TRUE COPY OF PLAN SUBMITTED BY ADV.COMMISSIONER ALONG WITH EXT.P4 REPORT.

EXT.P5 – TRUE COPY OF AFFIDAVIT ACCOMPANYING I.A.1928/05 IN O.S.411/04 OF PRL.MUNSIFF, KASARAGOD.

EXT.P6 – TRUE COPY OF ORDER DT.8.12.05 IN I.A.1928/05 IN O.S.411/04 OF PRL. MUNSIFF, KASARAGOD.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.97 OF 2006

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DATED THIS THE 13th JULY, 2007

J U D G M E N T

The fervent and persuasive submissions of Mr.K.Jayesh Mohankumar, counsel for the petitioner notwithstanding, I am not inclined to set aside Ext.P6 order straightaway. But, at the same time, it appears to me that the contentions raised by the petitioner in para.7 of Ext.P2 written statement and also through Ext.P5, the affidavit in support of I.A.1928 of 2005, on the basis of which Ext.P6 order is now passed, require to be examined by the learned Munsiff even before he decides the suit.

2. Accordingly I permit the petitioner to cite the advocate commissioner as his first witness when the case is posted for defence evidence. The petitioner can cross-examine the advocate commissioner and can also adduce any other evidence which the Panchayat may have against the commissioner's report and in support of I.A.No.1928 of 2005. Once the petitioner has completed that part of his evidence regarding the acceptability of the present commissioner's report, the learned Munsiff will hear the parties on the basis of the evidence which has come on record (i.e., the evidence of the plaintiffs and the evidence of the 1st defendant adduced in the

context of the objections to the commissioner's report) and take a decision as to whether the commissioner's report requires remittance or cancellation. The learned Munsiff will proceed with the trial further, only after a decision is given on the above issue. If the learned Munsiff is convinced on the basis of the evidence that there is warrant for either remitting the commissioner's report or to set aside the report, then the confirmation of Ext.P6 by this Court will not stand in the way.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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